

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NOS 5156 TO 5164/97.

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CROSS OBJECTIONS NOS. 47 To 50,  
52, 53, 56 TO 58/98 .

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CIVIL APPLICATIONS NOS. 4276 TO 4294/98

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

GOVIND MAMAIYA

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Appearance: IN F.As. NOS. 5156 TO 5160/97.

MR P.G.DESAI, GP for the appellant.

MR YS LAKHANI for Respondent No. 1, 2, 3

IN F.As. NOS. 5161 TO 5164/97.

Mrs AMEE YAGNIK, AGP for the appellant.

MR YS LAKHANI for Res.Nos. 1,2,3.

IN CROSS-OBJECTIONS :

MR YS LAKHANI advocate for the Cross-objectors.

MR PG DESAI GP & MRs. AMEE YAGNIK AGP for the  
Respondent-State.

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CORAM : MR.JUSTICE M.R.CALLA and

MISS JUSTICE R.M.DOSHIT

Date of decision: 07/09/98

ORAL JUDGEMENT (PER : CALLA J )

Heard learned counsel for the parties. The matters came up before us today. Civil Applications Nos. 4276/98 to 4284/98 are on the Board, while the main First Appeals Nos. 5156/98 to 5164/98 are on the board for final hearing as a group matter at Item No. 28 of the Board of the First Appeals. The learned counsel for both the sides have submitted that instead of hearing and deciding the Civil Applications, main First Appeals itself may be heard and decided. Accordingly, appeals were taken up for final hearing along with the cross objections on request of both the sides. Since the Appeals are directed against the common judgment and order and Cross Objections therein, involve common questions, all these Appeals and Cross Objections are decided by this common judgment.

The dispute involved is about the amount of compensation in respect of the land and the trees standing thereon etc. acquired under the Land Acquisition Act pertaining to the village Mota Dadva, Taluka-Gondal, District-Rajkot. The land was sought to be acquired for Ishvaria Irrigation Scheme. Notice under section 4 of the Act was issued on 13th October 1983 and thereafter the notice under section 6 of the Act was issued on 30th May, 1985. The Land Acquisition Officer passed an Award on 21st May 1986 in Land Acquisition case No.109/83. Against this Award passed under section 6 of the Act, Land Acquisition References were made and thus References Nos. 77/88 to 85/88 were decided on 7th October, 1997 by a common judgment and order passed by the learned Extra Assistant Judge, Rajkot at Gondal. Against this common judgment and order dated 7th October, 1997 whereby 9 Land References, as above, have been decided, the State of Gujarat has preferred these 9 First Appeals and in each of these appeals, the claimants have

filed their cross-objections numbered as above. The Land Acquisition Officer had determined the market value of the land, at the relevant time, at the rate of Rs.110/per Are and at Rs. 3-25 ps. instead of Rs.2-50 The learned Judge, on the basis of the material on the record, came to the conclusion that at least Rs.150/- per Are compensation should have been awarded to the claimants. Accordingly, it was ordered that the claimants were entitled to get Rs.40/- per Are as additional compensation for the acquired land. The learned Judge has considered all the relevant aspects including the submissions that in certain other Land References with reference to the land adjoining to the land in question in the same village, the 2nd Extra Assistant Judge, Gondal, awarded Rs.150/- per Are to the claimants, and in some other Land References, a sum of Rs.90/- per Are had been awarded and the factual position about the land in question being the adjoining land in the same village is not in dispute. So far as the assessment of the market value of the land in question at the rate of Rs.150/per Are is concerned, there is no serious dispute, but the controversy is raised with regard to the Award of compensation pertaining to the eucalyptus trees and that too particularly in Land References Nos. 77/88 and 78/88, wherein the compensation of Rs 23,15,550/- and Rs.23,300/- have been awarded for eucalyptus trees. The learned Government Pleader submitted that the claimants had examined only one witness in their favour while on behalf of the State Government, 5 witnesses were examined. He has taken us through the entire evidence and certain other documents i.e. Rojkam etc. In Reference Case No. 77/88, one Govindbhai Mamaiyabhai had been examined as witness no.1, who has deposed that there were about 20,000 eucalyptus trees and these trees were about 6 years old with the height of 78 Mts, with the thickness of 1.5 Ft. to 2-00 Ft. He also deposed that the trees were useful and each and every tree could have fetched atleast Rs.200/-. He also made reference to the Panchayat Patrak Ex-37 prepared by the District Panchayat on 11th March, 1984, and also made reference to the booklets showing the price for the eucalyptus trees. He has also deposed that there were other plants of lemon and various kinds of other fruits and for each such tree, he has stated that the price should have been atleast Rs.200/-. In cross-examination, he has admitted that he had claimed compensation for 18,250 trees only in his application.

On behalf of the State one Kanaiyalal Maganlal who was a Surveyor was examined as Witness No.1. He has stated that at the time when he went to survey the land

in question, the land holders were also present since they were intimidated. According to this witness, the trees were in a very bad condition and same could not be used even as fuel. He has stated in his cross-examination that they were of no use. He has stated, after looking into the record that there were about 25,000 eucalyptus trees; that he had no basis for saying that at the time of the survey, the applicants were present. One Bhavanbhai Thakarsibhai, District Agricultural Officer was also examined as Witness No.2. He has deposed that the trees of Subaval and eucalyptus look identical and are of the same class, but the growth may not be similar. The growth of the trees depend upon the type of land, fertiliser and water. The eucalyptus trees in Saurashtra are generally of poor quality. The age of eucalyptus trees may be about 50 years and that of Subaval to be of 40 years. He has referred to Exs. 82 and 40 for the purpose of deciding the price of trees. He has deposed that he had not visited the spot, neither he had seen the trees in question. He has also stated that the the rates of the trees of eucalyptus and Subaval which have been fixed by the Government are the same all over the State The leaves of the eucalyptus may be useful in preparing medicines. The Deputy Executive Engineer Nanubhai Parbatbhai has been examined as Witness No.3. He has deposed that when he had gone for Rojkam, trees were in rotten condition and only wettrees were there. The trees were not in good condition. In cross-examination he has stated that on 18th July 1983, there were heavy rains and eucalyptus trees had submerged in water and the District Panchayat had prepared the Rojkam with regard to the loss sustained on account of the heavy rains and submerging of the trees. He has referred to Rojkam Ex.37. He has admitted that he has no experience with regard to the cultivation of the trees of eucalyptus. The next witness is yet another Deputy Executive Engineer Devendra Trambaklall Gorasia. He has referred to Rojkam Ex.86, in which the condition of trees has been mentioned. He has also deposed that when he had gone for Rojkam after three years, the trees were submerged in water and excess water was there because of dam. The fifth witness is Jadavbhai Bhagvanbhai Vora who was the concerned Deputy Collector at Rajkot during 1984 to 1986. He has stated that at that time on behalf of the Khatedars no objection was taken with regard to the compensation in respect of the land and trees etc. He has also stated that the construction which has been raised on the land in question and the wells etc. had been valued by the Deputy Executive Engineer and the costs of the trees of eucalyptus and Subaval and other trees were worked out on the basis of the Land Acquisition

Manual. After taking into consideration the age of the trees, the diameter or circumference of the trees, the Award dated 21st May 1986 was published. He has justified the amount of compensation and submitted that at the time of acquisition no objection was taken by the applicant regarding the price of the trees. He has admitted in cross-examination that the trees of eucalyptus which he had seen were two to five years old. He has agreed to the suggestion that the entire land was mentioned in the Notification under section 4, dated 13th October 1983. Agreement to sale regarding Survey No. 275 is dated 6th April 1981. He has also admitted his signature below Ex. 86. After considering the evidence as aforesaid, the learned Extra Assistant Judge, Rajkot at Gondal had passed the order dated 7th October 1997.

Both the sides are aggrieved against this order in as much as the State Government has filed First Appeals challenging the additional compensation as being disproportionate and should not have been awarded by the learned Extra Assistant Judge in view of the condition of the trees etc. and no compensation of the existing wells on the land could have been given. Mr. Lakhani on behalf of the Cross-objectors has submitted that the claimants were entitled to more additional compensation than what the learned Extra Assistant Judge has awarded keeping in view the rates fixed by the Government particularly the Price Schedule produced with the Rojkam Ex.39 keeping in view diameters, circumference and age of the trees. He has also submitted that the survey and Rojkam have been conducted with regard to the land and trees after a period of more than three years. He has also stated that the land was submerged in the water and the trees standing thereon had also remained submerged in the water for all this period and therefore even if their value is deteriorated and it is said that they were not useful even for the purpose of fuel, such owners were not at fault. Mr. Lakhani has placed strong reliance on Panchayat Patrak Ex.37, as also been referred to by the witness who appeared on behalf of the Government.

On behalf of the State, Mr. P.G.Desdai has relied upon STATE OF BIHAR VS RATANLAL SAHU & ORS reported in (1996) 10, SCC 635; SPECIAL LAND ACQUISITION OFFICER VS VIRUPAX SHANKAR NADAGOUDA, reported in (1996) 6, SCC, 124; and STATE OF BIHAR VS MADHESHWAR PRASAD, reported in (1996) 6, SCC, 197. GOPALBHAI BECHARBHAI, reported in (1996) 6, SCC, 12. On the basis of the cases which have been cited by the learned Government Pleader, it is clearly established that an owner of land getting water from the well to raise the crops and claiming

compensation on that basis is not entitled to separate compensation for the well. In such cases, the well being used for irrigation of the land can not be separately valued. It has also been held that when water is being used from the tank and well for cultivation of the land, no separate value can be granted for the same. On the basis of the three Supreme Court decisions as aforesaid, it is now well settled that there is no question of either valuing the wells separately or for awarding separate compensation for the well on the land because they are already taken into consideration at the time of valuing the land itself. May be, at the time when the impugned orders were passed, these judgments of the Supreme Court were not there and therefore the court may have granted compensation separately for the wells, but such compensation which has been granted keeping in view the wells on the land can not be sustained in the eyes of law in the light of the Supreme Court decisions as aforesaid. So far as the compensation which has been granted for the trees and plants and other items, we do not find that the order passed by the learned Extra Assistant Judge, Rajkot at Gondal under section 18 suffers from any infirmity. The order has been passed on the basis of the material and evidence available on the record. The witnesses who appeared on behalf of the State failed to make out any case. It is also not in dispute that the land remained submerged in water for a period over three years and the assessment was made thereafter and if the land remains submerged along with the trees and plants in water for such a long period, their condition is bound to deteriorate and their utility is also bound to be diminished. But the claimants could not be subjected to any prejudice on that account if the authorities failed to prepare the statements of claims at the appropriate time. Besides this, the Panchayat Patrak Ex.37 on which heavy reliance has been placed by Mr. Lakhani is a document in the nature of contemporaneous evidence at a point of time when the actual lis between the parties had not even commenced and the Panchayat Patrak Ex.37 also supports the claims of the claimants on facts apart from the depositions made by the claimants. Thus, we find that except for the separate compensation which has been granted in respect of the wells, the order is just and proper.

We have also heard Mr. Lakhani at length in support of the Cross-Objections filed by him, but we find that on the basis of the material which came on record, the learned Extra Assistant Judge has taken all relevant factors into consideration before passing the impugned order and the conclusions arrived at by him are based on

proper reasons, on the basis of the material and evidence, and he has taken a just and reasonable view which does not warrant interference either way. Thus, we do not find any reason to interfere with the impugned order either at the instance of the claimants or at the instance of the State Government except in respect of the separate compensation granted for the wells.

Mr. Desai has submitted that the amount which the State Government is required to deposit by 29th July 1998 under the orders of this court, must have been deposited by due date and he further submits that if the same is not deposited so far, it will be deposited now before the learned Extra Assistant Judge, Gondal on or before 30th September 1998. Of course, this amount shall be adjustable against the total amount payable as per the order modified by this court.

Accordingly, the appeals filed by the State are partly allowed to the extent that no separate compensation shall be paid as has been awarded in respect of the wells. In all other aspects the order passed by the learned Extra Assistant Judge is upheld and the orders stand modified so as to exclude the separate compensation with regard to the wells. The appeals are partly allowed as indicated above and the Cross Objections are hereby dismissed. No order as to costs.

JOSHI